

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEVIN JENSEN and JESSICA JENSEN

vs.

LIBERTY MUTUAL INSURANCE
COMPANY

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Civil Action No. _____
(JURY)

NOTICE OF REMOVAL

Defendant, Liberty Insurance Corporation *incorrectly sued as Liberty Mutual Insurance Company* (referred to as “Defendant”) timely files this Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1332(a), and 28 U.S.C. § 1446(b), removing this action from the 506th Judicial District Court of Waller County, Texas to the United States District Court for the Southern District of Texas, Houston Division and in support thereof show as follows:

A. Introduction

1. Plaintiffs commenced this lawsuit against Defendant in the 506th Judicial District Court of Waller County, Texas on or about August 8, 2016. A true and correct copy of the Original Petition along with documents reflecting service are attached hereto as Exhibit “1.” Plaintiffs served the Original Petition on Defendant through its registered agent on August 11, 2016. See Exhibit 1.

2. Defendant is filing this Notice of Removal within 30 days of its first receipt of Plaintiffs’ Original Petition as required by 28 U.S.C. § 1446(b).

3. Plaintiffs seek to recover damages in this lawsuit based on allegations of breach of contract, breach of the duty of good faith and fair dealing, violations of the Texas Insurance

Code, violations of the Texas Deceptive Trade Practices Act and fraud resulting from the alleged conduct of Defendant. Plaintiffs' claims against Defendant arise under a homeowner's policy of insurance issued by Defendant on Plaintiffs' residential property located in Waller County, Texas, which is alleged to have been damaged by a wind/hail storm occurring on or about April 18, 2016.

B. Jurisdiction & Removal

4. This Court has jurisdiction in the case pursuant to 28 U.S.C. §1332, in that there is complete diversity of citizenship between the parties. Accordingly, statutory authority for the removal of this matter is conferred by 28 U.S.C. §§ 1441 and 1446.

5. Plaintiffs are citizens of the State of Texas. Defendant is a corporation organized under the laws of the State of Massachusetts, with its principal place of business in Boston, Massachusetts.

6. Plaintiffs' Petition states they are seeking monetary relief estimated at over \$1,000,000.00. Therefore, the amount in controversy exceeds \$75,000.00.

7. Plaintiffs' Petition seeks damages for breach of contract, violations of the Texas Insurance Code, violations of the Texas DTPA, breach of the duty of good faith and fair dealing and fraud. The petition requests actual damages in excess of \$300,000.00, attorneys' fees, statutory interest, emotional distress and exemplary damages.

8. The amount in controversy, per *Manguno v. Prudential Property and Cas. Ins. Co.*, 276 F.3d 720, 723 (5th Cir. 2002) and *St. Paul Reinsurance Co., Ltd. V. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998), includes the following elements of damages:

- Plaintiffs' actual damages (contract) for their losses under the insurance policy

- Damages for violations of the Texas Insurance Code and DTPA(statutory extra-contractual)
- Mental anguish
- Statutory Attorneys' fees

9. When the applicable damages for determining the amount in controversy as spelled out in *St. Paul Reinsurance* and *Manguno* are compared with the Plaintiffs' Original Petition it becomes clear that the amount in controversy in this case is above \$75,000.00.

10. Clearly, as this case progresses Plaintiffs' claims for fees as well as interest will rise. Plaintiffs have sought no specific damages for this. *St. Paul Reinsurance* and *Manguno* require all of these damage elements to be considered when determining the amount in controversy. This includes consideration of the policy limits. In this case, the policy limit for the dwelling is \$408,900.00 and the limit for Other Structures is \$40,890.00 (See Exhibit "2"). When all these elements are considered, the amount in controversy exceeds \$75,000.00.

11. Venue is proper in this district and division under 28 U.S.C. § 1441(a) because the state court where the action has been pending is located in this district and division.

12. Contemporaneous with the filing of this Notice of Removal, Defendant is filing a Notice of Filing Notice of Removal with the Clerk of Court for the 506th Judicial District Court of Waller County, Texas pursuant to 28 U.S.C. § 1446(d).

13. Attached hereto are all documents required by LR 81, USDC/SDTX Local Rules and 28 U.S.C. § 1446(a).

14. Defendant demanded a jury in the state court action. Defendant also requests a trial by jury pursuant to Rule 81(c)(3)(A), Federal Rules of Civil Procedure and LR 38.1, USDC/SDTX Local Rules.

15. All fees required by law in connection with this Notice have been tendered and paid by Defendant.

WHEREFORE, Defendant, Liberty Insurance Corporation hereby removes the above-captioned matter now pending in the 506th Judicial District Court of Waller County, Texas to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

SHEEHY, WARE & PAPPAS, P.C.

By: /s/ J. Mark Kressenberg

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**ATTORNEYS FOR THE DEFENDANT
LIBERTY INSURANCE CORPORATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above foregoing instrument has been forwarded via e-filing in accordance with the Federal Rules of Civil Procedure on this the 8th day of September, 2016, to the following counsel of record:

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/s/ J. Mark Kressenberg
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